

**THE NORTHWEST SEAPORT ALLIANCE**  
**MEMORANDUM**

**MANAGING MEMBERS**  
**ACTION ITEM**

<b>Item No.</b>	<u>7C</u>
<b>Date of Meeting</b>	<u>July 7, 2021</u>

**DATE:** June 23, 2021

**TO:** Managing Members

**FROM:** John Wolfe, CEO

**Sponsor:** Jason Jordan, Director, Environmental and Planning Services

**Project Managers:** Hughes Wike, Engineering Project Manager II, and  
Graham VanderSchelden, Environmental Project Manager II

**SUBJECT:** Authorization for Terminal 3 and Terminal 4 Shore Power Design Finalization and Construction, and Grant Agreement with Washington State Department of Ecology

**A. ACTION REQUESTED**

As referenced in NWSA Resolution No. 2020-02, Exhibit A, Delegation of Authority Master Policy, Paragraph 8.c.iii., states project costs exceeding \$300,000 require approval from Managing Members.

Request authorization to amend Interagency Agreement C1900059 with the Washington State Department of Ecology and to accept grant agreement OTGP-2021-NoSeAI-00039 in the amount of \$1.146 million from the Washington State Department of Ecology to support the Terminal 3 and Terminal 4 Shore Power Project.

Request project authorization in the amount \$11,070,000, for a total authorized amount of \$11,600,000, for design finalization and construction work associated with the Terminal 3 and Terminal 4 Shore Power Project, Master Identification No. 201100.01.

**B. BACKGROUND**

***Shore Power Program Background:***

The NWSA recently adopted an update to the Northwest Ports Clean Air Strategy which lays out an aspirational vision to phase out emissions from seaport activities by 2050. This expands on the 2017 Greenhouse Gas (GHG) Resolution policy previously adopted by Managing Members that sought to reduce GHG emissions 80% by 2050. Achieving this vision will involve adopting zero emission technology across ocean-going vessels, cargo handling equipment, trucking, rail, harbor vessels, fleets, and facilities. One notable objective of the newly adopted strategy is to install shore power at our major international container terminals by 2030.

### *Shore Power Description*

Shore power is the provision of power from the local grid to vessels while they are at berth, which allows them to shut off their auxiliary engines, eliminating emissions associated with onboard power needs. Without shore power, vessels burn distillate fuels or fuel oil while at berth to generate power. For a vessel to be able to use shore power, plug in points must be installed on the dock and the vessel itself must have special infrastructure installed onboard to accept shore power. We call ships with this infrastructure installed “shore power capable”.

Due to shore power infrastructure installations in California and Asia, the container vessel fleet serving the Pacific Rim is becoming increasingly shore power capable. NWSA staff annually conduct an analysis to assess the shore power capability of vessels calling our major international container terminals. This allows us to regularly assess and re-assess the efficacy of shore power as an emission reduction measure in our gateway. We use the Environmental Ship Index (ESI)<sup>1</sup> and the Port of Oakland’s list of shore power commissioned vessels<sup>2</sup>, cross referenced with the NWSA’s vessel call logs to determine if each call at our major international container terminals is shore power capable. Results of the 2020 analysis are shown in the table below, with calls at Husky Terminal highlighted in green. We estimate that approximately 55% of container ship calls at our major terminals across the gateway were capable of using shore power in 2020 and 78% of the calls at Husky Terminal were capable.

	<b>Total Calls</b>	<b>Shore Power Capable Calls</b>	<b>Percentage Shore Power Capable Calls</b>	<b>Hours per Shore Power capable call</b>	<b>Shore Power Capable Hours</b>
Husky	86	67	78%	68	4,574
PCT	103	72	70%	35	2,497
WUT	83	39	47%	53	2,061
South Harbor	272	178	65%	51	9,132
T-18	398	197	49%	32	6,393
T-30	97	47	48%	30	1,395
North Harbor	495	244	49%	32	7,788
<b>Gateway Total</b>	<b>767</b>	<b>422</b>	<b>55%</b>	<b>40</b>	<b>16,920</b>

### *Shore Power Benefits*

Implementing shore power at the NWSA’s major international container terminals would result in significant emission reductions, reducing impacts on air quality in near port communities and on climate change. Estimated emission reduction potentials for installing shore power across the major international container terminals in the NWSA gateway are shown in the table below, both for shore power capable calls in the 2020 vessel fleet and a hypothetical future scenario where all vessel calls are shore power capable. The latter represents an upper

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<sup>1</sup> [ESI Portal \(environmentalshipindex.org\)](https://www.environmentalshipindex.org/)

<sup>2</sup> [List of Shore Power Vessels - Google Sheets](#)

bound of future emission reduction potential if vessel owners were to install shore power infrastructure on container ships. Husky Terminal is highlighted in green, representing the estimated benefits from the Terminal 3/Terminal 4 shore power project. When Terminal 5 comes online, some of the benefits attributed to T-18 and T-30 in the table below would be likely realized at T-5 as vessel traffic shifts.

	Emission Reduction Potential from 2020 Shore Power Capable Fleet		Emission Reduction Potential if all Vessels were Shore Power Capable	
	GHG	DPM	GHG	DPM
<b>Husky</b>	3,902	1.26	5,008	1.62
<b>PCT</b>	2,097	0.68	2,999	0.97
<b>WUT</b>	1,755	0.57	3,735	1.21
<b>South Harbor</b>	7,754	2.51	11,742	3.80
<b>T-18</b>	5,215	1.68	10,536	3.40
<b>T-30</b>	1,161	0.37	2,397	0.77
<b>North Harbor</b>	6,376	2.05	12,933	4.17
<b>Gateway Total</b>	<b>14,130</b>	<b>4.56</b>	<b>24,675</b>	<b>7.97</b>

#### *Shore Power Program – Projects and Planning*

The NWSA's Shore Power Program seeks to deliver on the goal to install shore power at the major international container terminals by 2030 and to maximize its use. Achieving this goal will be incredibly challenging technically, logistically, and financially. Installation of shore power is currently underway for both berths at T-5 and the design for a shore power system at Terminals 3 and 4 (Husky Terminal, this project) is nearing completion. Design for a shore power system at Terminal 18 is expected to begin later this year. Planning for shore power at our other facilities that are currently major international container terminals (WUT, PCT, and T-30) will be refined over the next two years alongside comprehensive energy planning efforts (the Seattle Waterfront Clean Energy Strategic Plan and the South Harbor Electrification Roadmap).

#### *Shore Power Program – Maximizing Use*

We will work closely with our terminal operators and shipping lines to maximize use of our shore power systems. This includes working with the terminal operators and labor to coordinate labor for executing the shore power connections, working with the terminal operators and ocean carriers to coordinate billing for shore power use, and working with ocean carriers to ensure they are committed to plugging in when they come to our gateway. While we hope that energy prices will provide an incentive for shore power use, we will be evaluating an incentive program that can offset costs of using shore power in economic conditions that cause shore power to be more expensive than burning fuel.

As part of our Northwest Ports Clean Air Strategy, we will be including a suite of actions and milestones focused on maximizing shore power use. The draft actions and milestones are shown below. These may evolve over the summer as we conduct further engagement.

**Actions:**

<b>Work with terminal operators and labor to organize labor arrangement for connecting and disconnecting vessels from shore power.</b> <ul style="list-style-type: none"> <li>Begin a year before each shore power system is operational to ensure labor arrangements are in place when construction is complete.</li> </ul>
<b>Work with terminal operators, ocean carriers, and the utilities to ensure that billing procedures are in place to pass power costs to the ocean carriers.</b> <ul style="list-style-type: none"> <li>Begin a year before each shore power system is operational to ensure billing arrangements are in place when construction is complete.</li> </ul>
<b>Work with the ocean carriers to secure commitment to use shore power where it is provided in our gateway.</b>
<b>Annually analyze the vessel fleet at major container terminals to assess the fraction of calls shore power capable</b>
<b>Track shore power usage</b> <ul style="list-style-type: none"> <li>Track shore power usage.</li> <li>Track reasons that vessels do not connect and seek to mitigate factors that prevent shore power connections.</li> </ul>
<b>Perform a study by the end of 2021 to identify voluntary and/or incentive-based initiatives that would increase fuel efficiency and/or reduce air emissions from cargo ships transiting through the Puget Sound to NWSA and PoT terminals.</b> <ul style="list-style-type: none"> <li>Survey of what other ports do and the estimated effectiveness of each action</li> <li>Analysis of co-benefits from Quiet-Sound underwater noise program</li> <li>Analysis of slow steaming in Puget Sound</li> <li>Analysis of NWSA governance structure to analyze possibility for incentives</li> <li>Analysis of shore power incentives and potential low carbon fuel standard revenue</li> </ul>

**Milestones:**

<b>Milestone</b>	<b>Targeted Timeframe</b>	<b>Conditions for Success</b>	<b>Benefits</b>
Commercial agreements, billing arrangements, and labor arrangements are in place to enable and maximize shore power connections.	By the time shore power infrastructure installation is complete at each terminal.	<ul style="list-style-type: none"> <li>- Ocean carriers are willing to use shore power.</li> <li>- Terminal operators are willing to work with us to facilitate shore power connections.</li> </ul>	<ul style="list-style-type: none"> <li>- Enable shore power connections</li> <li>-Maximize shore power use</li> </ul>

Milestone	Targeted Timeframe	Conditions for Success	Benefits
50% of <b>shore power capable</b> vessel calls at terminals with shore power infrastructure plug in.	By two years after shore power installation is complete	- Ocean carriers and terminal operators agree to connect vessels to shore power	- Maximize emission reductions from investments in shore power infrastructure
80% of <b>shore power capable</b> vessel calls at terminals with shore power infrastructure plug in.	By three years after shore power installation is complete	- Electricity rates ensure that plugging in to shore power does not significantly increase operational costs	

### ***T3/T4 Shore Power Project History:***

Following authorization of design funds by the Managing Members in September 2020, the Terminal 3 & Terminal 4 Shore Power Project has advanced to approximately 90% design completion. Electrical, civil, and structural design elements have been defined to expand infrastructure within the existing electrical substations and to provide power to bullrail vaults on Terminals 3 and 4. Surveys and geotechnical investigation have been completed, equipment layouts have been confirmed, and electrical equipment sizing, and protection analysis has been performed.

As described in greater detail in our recent Friday Packet memo (dated March 4, 2021), the conceptual project design has been expanded based on current industry data and coordination with our local utility. The following changes have been made to improve operational flexibility by providing adequate power supply and shore power connection points to accommodate larger vessels (>14,000 TEU):

- Increased size of power transformers from 2.5 MVA (megavolt amperes) to 5.0 MVA.
- Added new TPU revenue meter, vault, and switch to Pier 3 shore power system.
- Added one new shore power vault at strategic location on Pier 3 bullrail.
- Expanded existing Terminals 3 & 4 substation footprints to accommodate new equipment.

Based on these design changes, additional work required to complete construction, and volatility of current market conditions, the total estimated project cost has increased to \$11.6 million, a \$5.9 million increase from the planning level estimate. Supporting construction cost estimates have been reviewed by an independent consulting firm and related recommendations have been incorporated.

## C. PROJECT DESCRIPTION AND DETAILS

### ***Project Objectives***

Install safe and functional shore power systems at Terminals 3 & 4. Reduce marine shipping emissions and improve air quality by eliminating the need for international container ships to run diesel engines while at berth.

### ***Scope of Project***

The overall scope of this project will include:

- Design, specifications, and permitting for public works contracting.
- Project and construction management.
- Installation of major electrical equipment such as transformers, switchgear assemblies, power factor correction components, conduit, and wiring.
- Addition of one new shore power vault on Pier 3 bullrail.
- Wharf modification and trenching work.
- Tacoma Public Utilities equipment upgrades.
- Inspection, testing, and commissioning.

### ***Scope of Work for this Request***

This project authorization request includes all tasks necessary to finalize the project design (90% - 100%) and complete construction, including the use of internal and external engineering and environmental services, procurement, and implementation.

### ***Schedule***

Complete Design	September 2021
Bid Advertisement	September 2021
Contract Award	November 2021
Substantial Completion	March 2023

## D. FINANCIAL IMPLICATIONS

### ***Estimated Cost of Project***

The total project cost including all stages is estimated at \$11,600,000.

### ***Estimated Cost for This Request***

The total estimated cost to complete the design and construction for this project is \$11,070,000. If the cost of this estimate is anticipated to exceed the authorized amount, additional Commission authorization will be requested.

### ***Estimated Sales Tax***

The total estimated sales tax to be paid to local and state governments for this project is \$942,881.

### ***Project Cost Details***

Phase	This Request	Total Previous Requests	Total Project Cost	Cost to Date	Remaining Cost
Design	<b>\$256,485</b>	\$530,000	\$786,485	\$448,604	\$337,881
Construction	<b>\$10,813,515</b>	\$0	\$10,813,515	\$0	\$10,813,515
<b>Total</b>	<b>\$11,070,000</b>	<b>\$530,000</b>	<b>\$11,600,000</b>	<b>\$448,604</b>	<b>\$11,151,396</b>

### ***Source of Funds***

The current Capital Investment Plan (CIP) allocates \$5,718,000 for this project. The budget will be updated during the 2022 budget process.

In support of the T3/T4 shore power project, Managing Members accepted a \$1 million grant from the Diesel Emission Reduction Act (DERA) grant fund in November 2019, and a \$1 million grant from the TransAlta Coal Transition Energy Technology Fund in January 2020. As described in the next section, staff are also requesting authorization to accept an additional \$1.1 million in grant funds from the Washington State Department of Ecology as part of this action. With this funding from Ecology, \$3.1 million in external funding has been secured to date to support the project. Grant income will be recorded as non-operating revenue at the time reimbursement is requested.

In addition to the funding already secured, staff submitted an application for DERA funding in Q1 of 2021 to further support the project. Unfortunately, this application was not successful. Because the project already received a maximum DERA award in 2019, we believe the project was seen as less competitive than others.

### ***Financial Impact***

Project costs will be capitalized and depreciated over an estimated useful life of 20 years. Estimated annual depreciation expense will be \$580,000. For reference, the revenue generated from the General Central Peninsula, including the NIM, equipment rental, and Husky is budgeted at approximately \$44.6 million per year. This investment in shore power does not result in an increase in contractual revenue requirements.

## **E. ECOLOGY FUNDING AGREEMENT**

In 2018, the Washington State Department of Ecology (Ecology) awarded the NWSA with a \$1.2 million grant from the Washington State Volkswagen Mitigation Fund to support the NWSA's Clean Truck Fund. These funds were to be used to back loans provided to truckers through the program. By early 2019, when the Clean Truck fund was closed, NWSA had used just \$53,787 of the \$1.2 million available. The Interlocal Agreement (ILA) for this funding states that the NWSA was to propose an alternative use for any unspent funds by May 31, 2019.

Through negotiations, the parties settled on shore power projects as the best fit for the remaining funds, which total about \$1.146 million. NWSA Government Affairs staff worked with legislators to include reappropriation language for the funds in the 2020 state capital budget. Staff have been working with Ecology since fall of 2020 on the contracting mechanisms for redirecting these remaining funds towards the Terminal 3 & Terminal 4 Shore Power Project.

The consensus between Ecology and NWSA staff was to amend the existing ILA between the parties to adjust the dollar amount to what was spent on the Clean Truck Fund (\$53,787) and add language guaranteeing that Ecology will enter into a separate grant agreement with the NWSA that provides the remaining funds (approximately \$1.15 million) to be spent on the Terminal 3 and Terminal 4 Shore Power Project. Because the NWSA holds the funds spent to date on the Clean Truck Fund in a loan-loss reserve account, the existing ILA is still necessary to describe how those funds will be managed. This action requests Managing Member authorization to amend the existing ILA and to enter into the new grant agreement as described. The existing ILA, the existing first amendment, the proposed second amendment, and the new grant agreement are provided as attachments.

#### **F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

Alternative 1: Do not proceed with T3/T4 Shore Power Project at this time. Declining to move forward with this project could result in a loss of \$3.1 million in grant funding for the T3/T4 project. Shore power-related infrastructure established by past Pier 3/Pier 4 reconfiguration projects would remain unused and the environmental benefits of shore power implementation would remain unrealized.

Alternative 2: Proceed with design finalization and installation of T3/T4 shore power systems. Potential reduction of GHGs and diesel particulate matter by greater than 3,000 tons per year and 1 ton per year, respectively.

**Alternative 2 is the recommended course.**

#### **G. ENVIRONMENTAL IMPACTS/REVIEW**

##### Permitting:

Based on our present understanding of the project, the work is already covered under the Port's existing programmatic terminal and shoreline area routine maintenance and repair permit, which includes utilities. A SEPA categorical exemption was issued in 2014. No new environmental permits are anticipated to be needed; however, the project will require Site Development and Electrical permits through the City of Tacoma.

##### Remediation:

Majority of project trenching and excavation will occur within clean fill. Select (new) vaults will extend to depth of existing environmental cap and legacy contamination. In such cases, appropriate controls will be implemented to ensure contaminated material is properly handled and disposed of.



Stormwater:

The water quality team will be consulted on any site disturbance that occurs during the project to ensure compliance with all regulations, policies, and procedures.

Air Quality:

The T3/T4 Shore Power Project is a critical component of the NWSA's 10-year plan to install shore power at our major international container terminals, supporting achievement of our GHG Resolution and Northwest Ports Clean Air Strategy goals.

## **H. ATTACHMENTS TO THIS REQUEST**

- Computer slide presentation.
- Attachment A: Interagency Agreement NO. C1900059 (ILA with Ecology for the Clean Truck Fund)
- Attachment B: First Amendment to Interagency Agreement NO. C1900059 (Extended the period of performance of the Loan-Loss Reserve program, signed in January of 2019)
- Attachment C: Proposed Second Amendment to Interagency Agreement NO. C1900059 (this action, reduced dollar amount and directs Ecology to issue one time grant to the NWSA for funds not used)
- Attachment D: Proposed Agreement No. OTGP-2021-NoSeAI-00039 (this action, one time grant agreement with Ecology for \$1.146 million to support the Husky Shore Power Project)

## **I. PREVIOUS ACTIONS OR BRIEFINGS**

<u>Date</u>	<u>Action</u>	<u>Amount</u>
March 4, 2021	Managing Members Staff Briefing	-
September 1, 2020	Managing Members Authorization	\$330,000
February 15, 2020	Executive Authorization	\$200,000
January, 2020	Managing Members authorization to accept TransAlta grant	-
November, 2019	Managing Members authorization to accept DERA grant	-
<b>TOTAL</b>		<b>\$530,000</b>



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

RECEIVED NOV 07 2018

**IAA No. C1900059**

**INTERAGENCY AGREEMENT (IAA)**

**BETWEEN**

**THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY**

**AND**

**THE NORTHWEST SEAPORT ALLIANCE**

**THIS INTERAGENCY AGREEMENT** ("Agreement" or "IAA") is made and entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and the Northwest Seaport Alliance hereinafter referred to as the "NWSA" and "CONTRACTOR," pursuant to the authority granted by Chapter 39.34 RCW.

**THE PURPOSE OF THIS AGREEMENT** is for support of NWSA's Clean Truck Fund (CTF). ECOLOGY funding support for the CTF will provide the following:

- Access to market rate financing via loan loss reserves (or loan guarantees); and
- Incentives to scrap older trucks that are replaced with CTF loans.

The CTF will assist qualified truck drivers with the greatest need (and challenge) in obtaining the financing necessary to replace their older drayage trucks and purchase trucks with 2007 and newer engines as part of the NWSA Clean Truck Program's larger effort to achieve air quality objectives under the Northwest Ports Clean Air Strategy.

**WHEREAS**, ECOLOGY has legal authority under RCW 70.94 to undertake the actions in this agreement, and ESSB 6095, Chapter 298, Laws of 2018, Section 3010 directs ECOLOGY to provide \$1,200,000 of funds in the Air Pollution Control Account to NWSA for a clean truck fund.

**WHEREAS**, NWSA has legal authority under ESSB 6095, Chapter 298, Laws of 2018, Section 3010 to undertake the actions in this agreement.

**WHEREAS**, NWSA can affect improvements to public health by reducing public exposure to harmful pollutants and help address climate change by reducing air pollution from vehicles used in cargo transport to, from, and within NWSA's Port facilities.

**THEREFORE, IT IS MUTUALLY AGREED THAT:**

**1) SCOPE OF WORK**

NWSA shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Appendix A, Statement of Work and Budget, attached hereto and incorporated herein.

**2) PERIOD OF PERFORMANCE**

The period of performance of this IAA shall commence on November 1, 2018, or the date of final signature, whichever occurs later, and be completed by June 30, 2026 unless terminated sooner as provided herein. Amendments extending the period of performance, if any, shall be at the sole discretion of ECOLOGY.

**3) COMPENSATION**

Compensation for the work provided in accordance with this IAA has been established under the terms of RCW 39.34.130 and RCW 39.26.180(3). This is a performance-based agreement, in which payment is based on the successful completion of expected deliverables.

The source of funds for this IAA is from the Air Pollution Control Account, a State fund source. Both parties agree to comply with all applicable rules and regulations associated with these funds.

The parties have determined that the cost of accomplishing the work identified herein will not exceed **\$1,200,000 (One million and two-hundred thousand dollars)**. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree via an amendment to a higher amount. Compensation for services shall be based on the terms and tasks set forth in Appendix A, Statement of Work and Budget. ECOLOGY will not make payment for invoices until it has reviewed and agreed that the work for which payment is being sought has been completed.

**4) BILLING AND PAYMENT PROCEDURE**

Payment requests shall be submitted on state form, Invoice Voucher A19-1A. The Invoice Voucher packet should also include supporting documentation specified in Appendix A. Invoices shall describe and document to ECOLOGY's satisfaction a description of the work performed, the progress of the work, and related costs. Each invoice voucher shall reference the Agreement (IAA) number and clearly identify those items that relate to performance under this Agreement. Payment will be made within thirty (30) days of submission of a properly completed invoice (including form A19-1A) with supporting documentation. All expenses invoiced shall be supported with documentation of loan obligations and scrap incentive payments.

Send invoices to:

State of Washington Department of Ecology Attn: Air Quality Program, Carrol Johnston P.O. Box 47600 Olympia, WA 98504-7600
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Payment requests may be submitted on a monthly basis following obligation of Loan Loss Reserve (LLR) funds and payments for scrap incentives. Upon expiration of this Agreement, any claim for payment not already made shall be submitted to ECOLOGY within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

Payment will be issued through Washington State's Department of Enterprise Services Statewide Payee Desk. To receive payment you must be registered as a statewide vendor. To register submit a state-wide vendor registration form and an IRS W-9 form at website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. If you have questions about the vendor registration process you can contact DES at the Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.wa.gov).

#### **5) ALTERATIONS AND AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

#### **6) ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

#### **7) ASSURANCES**

Parties to this Agreement agree that all activity pursuant to this agreement will be in accordance with all the applicable current federal, state, and local laws, rules, and regulations.

#### **8) CONFORMANCE**

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### **9) DISPUTES**

Parties to this Agreement shall employ every effort to resolve a dispute themselves without resorting to litigation. In the event that a dispute arises under this Agreement that cannot be resolved among the parties, it shall be determined by a Dispute Board in the following manner. Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms, and applicable statutes and rules, and then make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto, unless restricted by law. The cost of resolution will be borne by each party paying its own cost. As an alternative to this process, if state agencies, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control. The parties may mutually agree to a different dispute resolution process.

#### **10) FUNDING AVAILABILITY**

ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, for convenience or to renegotiate the Agreement subject to new funding limitations and conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by NWSA through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and NWSA. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

### **11) GOVERNING LAW AND VENUE**

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

### **12) INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

### **13) ORDER OF PRECEDENCE**

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable federal and state of Washington statutes, regulations, and rules.
- b. Mutually agreed upon written amendments to this Agreement.
- c. This Agreement, number C1900059.
- d. Appendix A, Statement of Work and Budget.
- e. Appendix B, NW Seaport Alliance Clean Truck Fund Program Summary.
- f. Any other provisions or term of this Agreement, including materials incorporated by reference or otherwise incorporated.

### **14) RECORDS MAINTENANCE**

The parties to this Agreement shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These materials shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other materials relevant to this Agreement must be retained for six years after expiration of this Agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period. Each party will utilize reasonable security procedures and protections for all materials related to this Agreement. All materials are subject to state public disclosure laws.

### **15) RESPONSIBILITIES OF THE PARTIES**

Each party of this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party will be considered the agent of the other party to this Agreement.

### **16) RIGHTS IN DATA**

Unless otherwise provided, data which originates from this Agreement shall be "work made for hire" as defined by the United States Copyright Act, Title 17 U.S.C. section 101 and shall be owned by state of Washington, ECOLOGY and NWSA. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

#### **17) SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

#### **18) SUBCONTRACTORS**

NWSA agrees to take complete responsibility for all actions of any Subcontractor used under this Agreement for the performance. When federal funding is involved, there will be additional subcontractor requirements and reporting.

Prior to performance, all subcontractors who will be performing services under this Agreement must be identified, including their name, the nature of services to be performed, address, telephone, WA State Department of Revenue Registration Tax number (UBI), federal tax identification number (TIN), and anticipated dollar value of each subcontract. Provide such information to ECOLOGY's Agreement manager.

#### **19) TERMINATION FOR CAUSE**

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

#### **20) TERMINATION FOR CONVENIENCE**

Either party may terminate this Agreement without cause upon the thirtieth (30) calendar day following prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

#### **21) WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a written amendment to this Agreement signed by an authorized representative of the parties.

#### **22) AGREEMENT MANAGEMENT**

The representative for each of the parties shall be responsible for and shall be the contact person for all communications, notifications, and billings questions regarding the performance of this Agreement. The parties agree that if there is a change in representatives that they will promptly notify the other party in writing of such change, such changes do not need an amendment.

The ECOLOGY Representative is:	The NWSA Representative is:
Name: Brett Rude Address: PO Box 47600 Olympia, WA 98504-7600 Phone: 360.407.6847 Email: brett.rude@ecy.wa.gov Fax: 360.407.6989	Name: Nicola Graham Address: PO Box 2985 Tacoma, WA 98401-2985 Phone: 253.383.9444 Email: ngraham@nwseaportalliance.com

**23) ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS WHEREOF, the parties below, having read this Agreement in its entirety, including all attachments, do agree in each and every particular as indicated by their below signatures.

**State of Washington  
Department of Ecology**

By: Polly Zehm 11/9/18  
Signature Date

Polly Zehm

Deputy Director

**The Northwest Seaport Alliance**

By: John Wolfe 11/1, 2018  
Signature Date

John Wolfe  
Print Name:

CEO  
Title:

Approved as to form only:  
Office of Attorney General

## **APPENDIX A STATEMENT OF WORK AND BUDGET**

### **Introduction**

NWSA's Clean Truck Fund (CTF) will provide loan loss reserves (LLR, or loan guarantees) and truck scrapping incentives to truck owners serving marine terminals so that those owners can replace their older trucks and purchase trucks with 2007 and newer engines, in compliance with the goals of the Northwest Ports Clean Air Strategy. NOTE: The CTF includes additional funding sources, products and anticipated results, beyond this agreement. Please see Appendix B for additional CTF details.

ECOLOGY has spending authority in ESSB 6095 intended to scrap and replace old, high-polluting diesel school buses, transit buses, and other vehicles with low-emission and zero-emission vehicles. \$1,200,000 of this funding has been appropriated specifically to be provided to NWSA for the CTF.

The purpose of this Agreement is to provide up to \$1,200,000 to support NWSA's CTF.

- ECOLOGY will provide up to \$642,500 to support LLR funding for up to approximately 128 truck loans. This assumes a 10 percent LLR (\$5,000) on an average truck loan of \$50,000.
- ECOLOGY will also provide up to \$557,500 to support scrap incentives for up to 93 trucks (based on an average of \$6,000 per truck) that are replaced with trucks purchased under the loan program.

### **The Clean Truck Fund and Community Development Financial Institutions**

The CTF will provide equal access to market rate truck loans by providing LLR for Community Development Financial Institutions (CDFIs) meeting NWSA criteria. Monthly loan payments and term length must be competitive with market rate loans in the Pacific Northwest and meet the recommendation of the financial counselor, if used.

### **Clean Truck Fund Loans and Loan Loss Reserve**

CDFIs will independently determine if applicant drivers meet the CDFI's qualifications and decide to whom loans are made. A CDFI must enter into a loan agreement with a driver if he/she meets application criteria. As long as each loan meets the requirements of the CTF (maximum loan term 7 years, maximum interest rate 15%, borrower uses the loan to purchase compliant truck) and the CDFI is eligible to enroll its loan(s) in the CTF to have a loan loss reserved for 10% of the total pool of loans made by that CDFI.

Based on a NWSA survey, the majority of drivers cited concerns about a down payment as the primary reason for not having a truck that is compliant with NWSA CTF emissions standards (2007 or newer engine). Therefore, NWSA is making available up to 93 scrap incentives, up to \$6,000 each, to support truck drivers in scrapping their noncompliant trucks. It is anticipated that many owners will have trucks worth more than \$8,865 and would depend on the trade-in value of their noncompliant truck for a down payment on a compliant truck. Down payments are typically 20% of the value of the replacement truck. Therefore, CDFIs will offer multiple products under the CTF, including the option to receive a scrap incentive and a loan, or solely a loan.

ECOLOGY and NWSA agree that this agreement will only provide LLR contributions based on 10 percent of the the value of loans that meet the following criteria:



- The truck owner provides documentation confirming that the truck purchased with loan proceeds is a used or new truck equipped with 2007-year engine or an engine that meets 2007 or subsequent emissions standards; the engine may use diesel fuel, compressed natural gas (CNG), or liquefied natural gas (LNG); and
- Within 15 business days of after securing a loan through a CDFI, the truck owner must surrender the vehicle and engine being replaced to a NWSA-approved scrapyard. The scrapyard must provide documentation confirming that the truck being replaced has been scrapped per the specifications described below.

As described in Appendix B, other sources are providing LLR contributions for the Clean Truck Fund. This agreement will contribute LLR funding based on the loan value of loans meeting the appropriate criteria described above and in Task 2 Deliverables below. NWSA will track, record, and report on the amount of funding for each source committed to LLR. Prior to drawing upon additional CTF funding sources, LLR funds will be drawn from the \$642,500 provided through this agreement.

NWSA will maintain reserves in an amount equal to up to 10% of the principle amount of the total pool of loans enrolled in the CTF until the maximum LLR amount is met (up to \$1.625M total when funds from all sources are included). LLRs will be held in reserve by NWSA until a loan enters default and the CDFI submits a claim.

NWSA will track each loan made by the CDFI and record the amount of the LLR allocated to each lender, based on 10% of the total loans made by the lender. When submitting a claim, a CDFI can submit for the total amount unrecovered up to the maximum amount held in reserve for that CDFI (10% of the total amount of loans made by the CDFI).

NWSA will review all default claims submitted by CDFIs, as described below. Subject to submittal of a complete claim form, NWSA will reimburse the CDFI from the loan loss reserve within 30 business days.

### **Default of Loan**

NWSA will require the CDFI to notify NWSA within 120 days of the date when the lender has written-off all or part of a qualified loan because of default by a borrower. Subject to submittal of a complete claim form, NWSA will reimburse the CDFI lender from NWSA's loan loss reserve account within 30 business days. Claims must include documentation of collateral recovered in the event of default. The loan loss reserve would be used in the event of default after the lender has exhausted all options for collecting on loans in default (i.e., recovered collateral – in this case the truck – prior to being paid from the loss reserve).

NWSA will require the CDFI acknowledge that neither ECOLOGY nor NWSA will have liability to the CDFI under the CTF except to the extent of funds allocated in the LLR for the CDFI.

### **Scrap Incentives**

ECOLOGY and NWSA agree that this agreement will only reimburse NWSA for scrap incentive payments where documentation has been provided to confirm that the scrapped truck is replaced by a truck meeting the above specifications.

The applicant driver is required to scrap the noncompliant truck with an NWSA-approved scrap yard, and the scrap yard will document destruction of the truck and engine using ECOLOGY's NWSA CTF

Certificate of Destruction Form, which specifies scrapping requirements. The signed NWSA CTF Certificate of Destruction must be submitted to NWSA. This agreement will only fund scrap incentives for scrapping that has been documented by this form.

Upon confirming the truck was scrapped, NWSA will issue a check to an approved third party (such as the dealer of the replacement vehicle) or a joint check to both the dealer and truck owner to offset the driver applicant's loan obligation.

NWSA will track, record, and report the number of scrap incentives awarded and the source of funds supporting the incentives.

Prior to drawing upon additional CTF funding sources, as described in Appendix B, scrap incentives will be drawn from the following ECOLOGY funding sources in the following order:

1. \$234,000 from ECOLOGY Clean Diesel Grant to NWSA, AQDIESEL-1719-NoSeAI-00047 (up to 39 incentives)<sup>1</sup>
2. \$557,500 from this Agreement (up to 93 incentives).

Total funding: \$791,500 (132 scrap incentives)

## Reports

NWSA will require the CDFI provide monthly reports (by the 7<sup>th</sup> day of the following month) to NWSA on the number of drivers reviewed and the outcome of those reviews (whether drivers successfully obtained a loan) through December 31, 2018. The CDFI will report quarterly thereafter, on the status of the loans made through the loan term. From January 1, 2019 through December 31, 2025, NWSA will provide an annual report to ECOLOGY summarizing loan loss reserves from this agreement utilized on defaulted loans.

NWSA will issue monthly invoices to ECOLOGY for the amount owed under this agreement based on the preceding month's loan enrollment report and documented payments of scrap incentives. The loan enrollment period is expected to end on December 31<sup>st</sup>, 2018, and scrapping of the former trucks is expected to continue through February, depending on schedules at NWSA-approved scrap yards. NWSA final monthly report and invoice shall be provided to ECOLOGY by March 31, 2019, and the sum of invoices issued shall not exceed \$1,200,000. Upon the closure of the CTF in 2025, NWSA shall report to ECOLOGY the total amount of funds under this agreement and the ECOLOGY Clean Diesel Grant that were expended on LLR contributions and scrap incentives.

## Remaining Funds

NWSA shall close the CTF after all CDFI loans have closed by December 31, 2025. Upon the closure of the the CTF, NWSA shall review the balance of LLR funds remaining in the CTF attributable to Appendix A of this Agreement. If a balance of funds remains, NWSA will prepare an amendment to this agreement which, upon mutual agreement with ECOLOGY, may allocate the remaining funds for

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<sup>1</sup> These ECOLOGY grant funds to NWSA are in addition to the \$1,200,000 provided via this agreement and are documented in a separate agreement.

projects that will ensure that older models of vehicles are scrapped and replaced with vehicles or engines that have fewer emissions, or zero emissions, and contribute to further reductions of PM2.5.

### **Emissions Reduction Target**

In the event that fewer than 55.7 lifetime tons of PM2.5 are removed through the loan and scrap incentives funded through this agreement, NWSA will propose by May 31, 2019 an amendment to this agreement describing how any remaining funds can support grants to reduce additional air emissions by scrapping and replacing older, higher polluting diesel vehicles with vehicles or engines that have fewer or zero emissions, or as otherwise agreed to by the parties. Remaining funds may be used toward mandatory grant matches, additional revolving loan programs, port-owned projects, or tenant projects with priority given to the projects with the highest cost effectiveness and benefit to the community, consistent with the terms ESSB 6095.

### **Tasks and Deliverables**

#### **Task 1: Clean Truck Fund Launch**

- NWSA will obtain Non-Profit Financial Counseling support to coordinate the CTF lending process with lending institutions (certified CDFIs).
- NWSA will establish a loan enrollment process for participating lending institutions (CDFIs) to enroll qualifying loans and manage loan loss reserve funds.

#### **Task 1 Deliverables:**

- NWSA shall establish the CTF and start accepting applications no later than October 31, 2018.

#### **Task 2: Clean Truck Fund Administration**

- NWSA shall establish loan-intake procedures and requirements, contract with intake and loan service providers as needed, and administer the CTF, reserving all oversight functions to NWSA.
- ECOLOGY will provide the NWSA CTF Certificate of Destruction form to NWSA.
- NWSA shall continue to augment the balance of the CTF if and as funds become available from additional sources.

#### **Task 2 Deliverables:**

- Monthly loan enrollment reports will be provided to ECOLOGY by the fourteenth day of each month for the preceding month's loan enrollments and scrap incentives.
- NWSA shall issue an invoice to ECOLOGY monthly for the amount owed based on prior month's loan enrollment report and documented payments of scrap incentives.
  - ECOLOGY will only provide LLR contributions (up to 10% of the loan value - for example, a maximum of \$5,000 per \$50,000 loan) to the CTF LLR pool for loans that have provided appropriate documentation confirming the following:
    - the former truck was scrapped; and
    - the replacement truck meets the required specifications for emissions reductions.
  - Once the LLR contributions have been provided by this agreement and are included in the CTF, they can be used by the appropriate CFI for any loan that goes into default.

- ECOLOGY will only reimburse scrap incentive payments when appropriate documentation is provided confirming the following:
  - the truck has been scrapped;
  - it is being replaced with a truck meeting the emissions requirements specified in this agreement; and
  - a loan has been secured through a CFDI to purchase the replacement truck.
- NWSA shall provide the final monthly report for the loan period and corresponding invoice by March 31, 2019.
- NWSA shall report on the number of trucks scrapped by February 28, 2019 through the CTF and the associated emission reductions using the EPA Diesel Emission Quantifier tool.
- If less than 55.7 lifetime tons of PM<sub>2.5</sub> are removed through this agreement, NWSA will provide ECOLOGY a proposal by May 31, 2019 describing how any remaining funds can support projects to reduce the remaining air emissions through scrapping and replacing older diesel vehicles with newer vehicles or engines having fewer emissions, or as otherwise agreed to by the parties.
- From January 2019 through the closure of the CTF on December 31, 2025, NWSA will provide ECOLOGY an annual report of loan loss reserves utilized on defaulted loans.

### **Task 3: Clean Truck Fund Close Out**

- All of the loans supported through LLR in the CTF should close by December 31, 2025. After satisfaction of all loans issued with support by the CTF, NWSA shall close out the CTF.
- Upon the closure of the CTF, NWSA shall review the balance of LLR funds remaining in the CTF attributable to Appendix A of this agreement. If a balance of funds remains, NWSA will prepare an amendment to this agreement which, upon mutual agreement with ECOLOGY, allocates the remaining funds for projects that will ensure that older models of vehicles are scrapped and replaced with vehicles or engines that have fewer emissions, or zero emissions, or as otherwise agreed to by the parties, and contribute to further reductions of PM<sub>2.5</sub>.

### **Task 3 Deliverables:**

- If NWSA anticipates that funds from this agreement will remain in the loan loss reserve, NWSA will provide ECOLOGY a draft proposal within 60 days prior to the closure of this agreement (by April 30, 2026) describing how any remaining funds can support projects to further reduce port-related air emissions through scrapping older, higher polluting vehicles and replacing them with newer vehicles or engines with fewer emissions, or as otherwise agreed to by the parties. Upon mutual agreement with Ecology, NWSA may use remaining funds toward mandatory grant matches, additional revolving loan programs, port-owned projects, or tenant projects with priority given to the projects with the highest cost effectiveness and benefit to the community, consistent with ESSB 6095.
- Within 180 days following the closure of the CTF (by June 30, 2026), NWSA will submit to ECOLOGY a final report on the CTF reflecting the amount of LLR funds used to cover defaulted loans, the final remaining balance and emissions reductions, regardless of any pending amendments to this agreement. The report should include a statement of ECOLOGY funds from this agreement remaining in the loan loss reserve after the closure of the CTF.
- ECOLOGY and NWSA will amend this agreement to document the planned use of remaining funds.

### **Timeline of key dates:**

- Agreement start date: November 1, 2018, or the date of final signature, whichever occurs later
- NWSA CTF loan period closes: December 31, 2018
- Monthly reports, documentation, and invoices: Monthly, from start date until all funds committed under this agreement have been invoiced – March 31, 2019

- Final invoice for loan loss reserve and monthly report due to ECOLOGY: March 31, 2019
- Plan for use of remaining funds available on this agreement to meet PM2.5 reduction goal of 55.7 lifetime tons due to ECOLOGY: May 31, 2019
- Annual report on LLR utilized on defaulted loans: January 2019 through December 31, 2025
- Clean Truck Fund Closes: December 31, 2025
- Draft proposal due to ECOLOGY for use of anticipated remaining LLR funds consistent with ESSB 6095: April 30, 2026
- Final CTF Report due to ECOLOGY (regardless of pending amendment): June 30, 2026
- End date of this agreement: June 30, 2026

#### Budget Summary

Item	Description	Amount
1	<b>Task 2 –LLR:</b> Funding Commitments for CTF Loan Loss Reserve (LLR) for a maximum of \$642,500 in loans, funding up to 128 new trucks, based on an average of \$50K per loan	\$642,500
2	<b>Task 2 – Scrap Incentives:</b> Reimbursement of Scrap Incentive Payments for up to 93 trucks, based on an average of \$6K per incentive	\$557,500
	Total Agreement Cost	\$1,200,000

## APPENDIX B NORTHWEST SEAPORT ALLIANCE CLEAN TRUCK FUND

Part of the 10-year-old Northwest Ports Clean Air Strategy, NWSA's Clean Truck Program requires trucks serving Seattle and Tacoma terminals to have newer, cleaner-burning engines to reduce diesel emissions. Under the program, all trucks entering NWSA international container terminals must have a 2007 or newer engine, or have an equivalent emissions control retrofit to comply with the requirement by December 31, 2018.

The Clean Truck Fund's goal is to provide at least 325 qualified truck drivers equal access to market rate truck loans by providing a loan loss reserve (LLR) for Community Development Financial Institutions (CDFIs) who meet NWSA criteria. NWSA requires the CDFI to be registered and in good standing as a CDFI. Monthly loan payments and term length must be competitive with market rate loans in the Pacific Northwest and meet the recommendation of the financial counselor, if used. To be eligible for enrollment in the Clean Truck Fund, loans must meet the following loan terms:

- Maximum loan term is seven (7) years
- Maximum annual interest rate on a loan is 15 percent

For the purposes of this agreement, eligible purchases with loan proceeds are limited to used and new trucks equipped with 2007 year engines or an engine that meets 2007 or subsequent emissions standards; the engines can use diesel fuel, compressed natural gas (CNG), liquefied natural gas (LNG).

- The Clean Truck Fund includes grants from the State of Washington, Washington State Department of Ecology, California South Coast Air Quality Management District, and contributions from NWSA, the Puget Sound Clean Air Agency, and the City of Seattle.

The Clean Truck Fund is made up of contributions and grants from several entities:

NWSA Clean Truck Fund Contributions By Source		
Funding Source	Contribution	Use
WA State Department of Ecology – Air Pollution Control Account (this agreement)	\$1,200,000	Scrap incentives and LLR
NWSA	\$757,500	LLR
NWSA	\$242,500	Admin
WA State Clean Diesel Grant	\$234,000	Scrap incentives
Puget Sound Clean Air Agency	\$200,000	LLR
City of Seattle	\$150,000	Scrap incentives
SCAQMD DERA 2017	\$25,000	LLR
<b>Total Funding</b>	<b>\$2,809,000</b>	

<b>NWSA Clean Truck Fund Contributions By Usage Category</b>
--

Use	Amount	Source	Supports
Available for Loan Loss Reserve (LLR)	\$1,625,000	WA State, NWSA, PSCAA, SCAQMD	CFDI coverage for loan defaults, 10% of the loan value of up to 325 loans valued at \$50,000 each.
Available for Admin – 10% cap of LLR	\$242,500	NWSA	Administrative costs, including financial counseling for program applicants.
Available for Scrap Incentives	\$941,500	Clean Diesel Grant, City of Seattle, WA State	Supports up to 157 scrapping incentive payments, valued at \$6,000 each.
<b>Total Funding</b>	<b>\$2,809,000</b>		

Scrap incentives will be issued from the following funding sources in the following order and according to the terms of each funding source:

1. \$234,000 from the Washington Department of Ecology Clean Diesel Grant AQDIESEL-1719-NoSeAI-00047 to NWSA (up to 39 incentives);
2. \$557,500 from this Agreement (up to 93 incentives); and
3. \$150,000 contribution from the City of Seattle (up to 25 incentives).

Total funding: \$941,500 (up to 157 scrap incentives)



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## AMENDMENT NO. 01

TO

INTERAGENCY AGREEMENT NO. C1900059

BETWEEN THE

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

THE NORTHWEST SEAPORT ALLIANCE

PURPOSE: To amend the Agreement between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and The Northwest Seaport Alliance, hereinafter referred to as "NWSA" or "CONTRACTOR."

WHEREAS, NWSA anticipates increased interest in the loan program following enforcement of compliance requirements starting 1 January 2019 and has requested to extend the loan application and pre-enrollment period from the original date of December 31, 2018 to January 31, 2019. This amendment extends the loan application/pre-enrollment period and extends related dates in the agreement tasks and deliverables.

IT IS MUTUALLY AGREED the Agreement is amended as follows:

- 1) Appendix A: Statement of Work and Budget, Reports Section is amended to read as follows:

### Reports

NWSA will require the CDFI provide monthly reports (by the 7th day of the following month) to NWSA on the number of drivers reviewed and the outcome of those reviews (whether drivers successfully obtained a loan) through ~~December 31, 2018~~ March 31, 2019. The CDFI will report quarterly thereafter, on the status of the loans made through the loan term. ~~During the years from January 1, 2019 through December 31, 2025~~ 2026, NWSA will provide an annual report to ECOLOGY summarizing loan loss reserves from this agreement utilized on defaulted loans.

NWSA will issue monthly invoices to ECOLOGY for the amount owed under this agreement based on the preceding month's loan enrollment report and documented payments of scrap incentives. The loan application and pre-enrollment period is expected to end on ~~December 31st, 2018~~ January 31, 2019, and scrapping of the former trucks is expected to continue through ~~February-March 2019~~, depending on schedules at NWSA-approved scrap yards. NWSA final monthly report and invoice shall be provided to ECOLOGY by ~~March 31, 2019~~ May 31, 2019, and the sum of invoices issued shall not exceed \$1,200,000. Upon the closure of the CTF ~~in 2025~~ on March 31, 2026, NWSA shall report to ECOLOGY



the total amount of funds under this agreement and the ECOLOGY Clean Diesel Grant that were expended on LLR contributions and scrap incentives.

- 2) Appendix A: Statement of Work and Budget, Remaining Funds Section is amended to read as follows:

**Remaining Funds**

NWSA shall close the CTF after all CFDI loans have closed by ~~December 31, 2025~~ March 31, 2026. Upon the closure of the ~~the~~ CTF, NWSA shall review the balance of LLR funds remaining in the CTF attributable to Appendix A of this Agreement. If a balance of funds remains, NWSA will prepare an amendment to this agreement which, upon mutual agreement with ECOLOGY, may allocate the remaining funds for projects that will ensure that older models of vehicles are scrapped and replaced with vehicles or engines that have fewer emissions, or zero emissions, and contribute to further reductions of PM2.5.

- 3) Appendix A: Statement of Work and Budget, Tasks and Deliverables Section is amended to read as follows:

**Task 2 Deliverables (last bullet):**

- From January 2019 through the closure of the CTF on ~~December 31, 2025~~ March 31, 2026, NWSA will provide ECOLOGY an annual report of loan loss reserves utilized on defaulted loans.

**Task 3: Clean Truck Fund Close Out (first bullet):**

- All of the loans supported through LLR in the CTF should close by ~~December 31, 2025~~ March 31, 2026. After satisfaction of all loans issued with support by the CTF, NWSA shall close out the CTF.

**Task 3 Deliverables (second bullet):**

- ~~Within 180 days following the closure of the CTF (b~~By June 30, 2026), NWSA will submit to ECOLOGY a final report on the CTF reflecting the amount of LLR funds used to cover defaulted loans, the final remaining balance and emissions reductions, regardless of any pending amendments to this agreement. The report should include a statement of ECOLOGY funds from this agreement remaining in the loan loss reserve after the closure of the CTF.

**Timeline of key dates:**

- Agreement start date: November 1, 2018, or the date of final signature, whichever occurs later
- NWSA CTF loan application/pre-enrollment period closes: ~~December 31, 2018~~ January 31, 2019
- Monthly reports, documentation, and invoices: Monthly, from start date until all funds committed under this agreement have been invoiced – ~~March~~ May 31, 2019
- Final invoice for loan loss reserve and monthly report due to ECOLOGY: ~~March~~ May 31, 2019
- Plan for use of remaining funds available on this agreement to meet PM2.5 reduction goal of 55.7 lifetime tons due to ECOLOGY: ~~May 31~~ June 30, 2019

- Annual report on LLR utilized on defaulted loans: calendar years January 2019 through December 31, 2025 2026 (last report due before the end date of this agreement)
- Clean Truck Fund Closes: ~~December 31, 2025~~ March 31, 2026
- Draft proposal due to ECOLOGY for use of anticipated remaining LLR funds consistent with ESSB 6095: April 30, 2026
- Final CTF Report due to ECOLOGY (regardless of pending amendment): June 30, 2026
- End date of this agreement: June 30, 2026

All other terms and conditions of the original Agreement including any other amendments remain in full force and effect, except as expressly provided by this Amendment.

This Amendment is signed by persons who represent that they have the authority to execute this Amendment and bind their respective organizations to this Amendment.

This Amendment is effective on January 1, 2019.

IN WITNESS WHEREOF, the parties below, having read this Amendment in its entirety, including any attachments, do agree in each and every particular as indicated by their below signatures.

State of Washington  
Department of Ecology

The Northwest Seaport Alliance

By:

Polly Zehm 1/18/19  
Signature Date

By:

[Signature] 1/04/18  
Signature Date  
John Wolfe

Polly Zehm

Print Name:

CEO

Deputy Director

Title:

Approved as to form only.  
Assistant Attorney General



## AMENDMENT NO. 02

TO

INTERAGENCY AGREEMENT (IAA) C1900059

BETWEEN

THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

AND

THE NORTHWEST SEAPORT ALLIANCE

**PURPOSE:** To amend the Agreement between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and The Northwest Seaport Alliance, hereinafter referred to as “NWSA” or “CONTRACTOR.”

**WHEREAS,** ECOLOGY AND NWSA agree to reduce the value of the agreement to \$53,878.17. This amendment also recognizes the legislature’s 2019 capital budget reappropriation language allowing the remaining funds (\$1,146,121.83) to be used for shore power electrification in Tacoma. These funds will be executed through a one time grant (OTG) with NWSA.

IT IS MUTUALLY AGREED the Agreement is amended as follows:

### 1) COMPENSATION

Compensation for the work provided in accordance with this IAA has been established under the terms of RCW 39.34.130 and RCW 39.26.180(3). This is a performance-based agreement, in which payment is based on the successful completion of expected deliverables.

The source of funds for this IAA is from the Air Pollution Control Account, a State fund source. Both parties agree to comply with all applicable rules and regulations associated with these funds.

The parties have determined that the cost of accomplishing the work identified herein will not exceed ~~\$1,200,000 (One million and two hundred thousand dollars)~~ **\$53,878.17 (Fifty-three thousand, eight hundred and seventy eight dollars and seventeen cents)**. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree via an amendment to a higher amount. Compensation for services shall be based on the terms and tasks set forth in Appendix A, Statement of Work

State of Washington, Department of Ecology  
IAA No.

and Budget. ECOLOGY will not make payment for invoices until it has reviewed and agreed that the work for which payment is being sought has been completed.

All other terms and conditions of the original Agreement including any other amendments remain in full force and effect, except as expressly provided by this Amendment.

This Amendment is signed by persons who represent that they have the authority to execute this Amendment and bind their respective organizations to this Amendment.

This Amendment is effective on August 1, 2020.

IN WITNESS WHEREOF, the parties below, having read this Agreement in its entirety, including all attachments, do agree in each and every particular as indicated by their below signatures.

**State of Washington  
Department of Ecology**

**The Northwest Seaport Alliance**

By:

\_\_\_\_\_  
Signature Date

By:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Heather Bartlett

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Deputy Director

\_\_\_\_\_  
Title:

Approved as to form only:  
Office of Attorney General



## Agreement No. OTGP-2021-NoSeAI-00039

### ONE TIME GRANT PROGRAM AGREEMENT

#### BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

#### AND

NORTHWEST SEAPORT ALLIANCE (NWSA)

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and NORTHWEST SEAPORT ALLIANCE (NWSA), hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

### GENERAL INFORMATION

Project Title:	Shore Power for Ocean Going Vessels at Husky Terminal ("Project")
Total Cost:	\$9,500,000.00
Total Eligible Cost:	\$1,146,121.83
Ecology Share:	\$1,146,121.83
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	04/01/2021
The Expiration Date of this Agreement is no later than:	06/30/2026
Project Type:	Ecology Grant

#### Project Short Description:

To assist in the purchase and installation of electric shore power for ocean going vessels.

This project will help Washington ports accelerate the transition to zero emission technology, further encouraging other marine vessels to convert to shore power capability. Investing in shore power for ocean going vessels provides substantial air quality benefits: reduced NOx emissions, reduced toxic diesel particulates, reduced ozone precursors, and reduced greenhouse gas emissions.

#### Project Long Description:

This project is for the purchase and install of electric shore power for ocean going vessels at Husky Terminal, 1101 Port of Tacoma Rd, Tacoma, WA 98421.

Agreement No: OTGP-2021-NoSeAI-00039  
Project Title: Shore Power for Ocean Going Vessels at Husky Terminal ("Project")  
Recipient Name: NORTHWEST SEAPORT ALLIANCE (NWSA)

Ecology is investing in zero-emission technology projects statewide to reduce greenhouse gases that contribute to climate change and to reduce toxic emissions and improve human health, especially in communities historically disproportionately impacted by air pollution. Ecology, local clean air agencies, and environmental justice organizations have identified Washington ports as high priority areas to reduce toxic emissions and greenhouse gasses.

WHEREAS, ECOLOGY has the legal authority (RCW 70.94 and ESSB 6095, Chapter 298, Laws of 2018, Section 3010) to undertake the actions in this agreement.

WHEREAS, NWSA has the legal authority (RCW 53.57) to undertake the actions in this agreement.

WHEREAS, ECOLOGY issued Volkswagen notices of violation and penalties for violating Washington State laws and rules regarding vehicles emissions. Volkswagen settled their penalty with Ecology and deposited \$28.4 million into the air pollution contrail account (APCA). The Air Pollution Control Authority dismissed Ecology's case against Volkswagen.

WHEREAS, the Washington State Legislature appropriated funds from the Air Pollution Control Account (APCA) for the purpose of funding such projects that reduce air pollution, improve public health for thousands of Washington residents and help prevent violations of federal air quality standards.

WHEREAS, ECOLOGY provided \$1,200,000 of funds in the APCA to NWSA for a clean truck fund. ECOLOGY and NWSA have undertaken an INTERAGENCY AGREEMENT (IAA) for the clean truck fund (IAA No. C1900059).

WHEREAS, in the 2019 capital budget the Legislature allowed reappropriation of the remaining \$1,146,121.83 to be used for shore power electrification in Tacoma.

WHEREAS, ECOLOGY and NWSA have amended and therein reduced the value of IAA No. C1900059 to \$53,878.17 (see Amendment No. 2).

WHEREAS, NWSA can affect improvements to public health by reducing public exposure to harmful pollutants and help address climate change by reducing air pollution from ocean going vessels transporting cargo to and from Husky terminal.

WHEREAS, in addition to this grant from ECOLOGY for \$1.1 million, NWSA has been awarded funds for this Project from the Federal DERA program for \$1 million and from the TransAlta Coal Transition Energy Technology Fund for \$1 million.

WHEREAS, NWSA commits to obtain and/or provide all remaining costs above the \$3.1 million in total grant funding to complete this Project.

Overall Goal:

Purchase and install an electric shore power system to accommodate shore power capable ocean going vessels at Husky Terminal, 1101 Port of Tacoma Rd, Tacoma, WA 98421. Investing in shore power for ocean going vessels provides substantial air quality benefits: reduced NOx emissions, reduced toxic diesel particulates, reduced ozone precursors, and reduced greenhouse gas emissions.

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Recipient Name: NORTHWEST SEAPORT ALLIANCE (NWSA)

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Agreement No: OTGP-2021-NoSeAI-00039  
Project Title: Shore Power for Ocean Going Vessels at Husky Terminal ("Project")  
Recipient Name: NORTHWEST SEAPORT ALLIANCE (NWSA)

**RECIPIENT INFORMATION**

Organization Name: NORTHWEST SEAPORT ALLIANCE (NWSA)

Federal Tax ID: 47-4921178

DUNS Number: 080017209

Mailing Address: One Sitcum Plaza  
Tacoma, WA 98421

Physical Address: One Sitcum Plaza

Organization Email: dseaman@nwseaportalliance.com

**Contacts**

<b>Project Manager</b>	Graham VanderSchelden Environmmnetal Project Manager  1 Sitcum Way Tacoma, Washington 98421 Email: gvanderschelden@nwseaportalliance.com Phone: (253) 592-6791
<b>Billing Contact</b>	Graham VanderSchelden Environmmnetal Project Manager  1 Sitcum Way Tacoma, Washington 98421 Email: gvanderschelden@nwseaportalliance.com Phone: (253) 592-6791
<b>Authorized Signatory</b>	Graham Samuel VanderSchelden Environmmnetal Project Manager  1 Sitcum Way Tacoma, Washington 98421 Email: gvanderschelden@nwseaportalliance.com Phone: (253) 592-6791



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**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
Air Quality  
PO BOX 47600  
Olympia, WA 98504-7600

Physical Address: Air Quality  
300 Desmond Drive SE  
Lacey, WA 98503

**Contacts**

<b>Project Manager</b>	<p>Brett Rude</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: brud461@ecy.wa.gov Phone: (360) 407-6847</p>
<b>Financial Manager</b>	<p>Carrol Johnston</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: carr461@ecy.wa.gov Phone: (360) 407-6805</p>
<b>Technical Advisor</b>	<p>Brett Rude</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: brud461@ecy.wa.gov Phone: (360) 407-6847</p>

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## SCOPE OF WORK

Task Number: 1 **Task Cost:** \$1,146,121.83

Task Title: Design, Purchase, and Install Electric Shore Power

### Task Description:

Under this task (for the location of Husky Terminal, 1101 Port of Tacoma Rd, Tacoma, WA 98421) the recipient will:

- complete final design of a shore power system
- confirms Northwest Seaport Alliance managing members authorize construction and installation
- purchase and install electric shore power for ocean going vessels

### Task Goal Statement:

Northwest Seaport Alliance (NWSA) completes design of a shore power system, as well as purchase and installation of electric shore power for ocean going vessels at Husky Terminal, 1101 Port of Tacoma Rd, Tacoma, WA 98421.

NWSA managing members authorized construction and installation of the Husky shore power system for ocean going vessels.

### Task Expected Outcome:

1. A complete shore power system design to install a shore power system for ocean going vessels at the Husky Terminal.
2. NWSA managing members authorize construction and installation of the Husky shore power system
3. Purchase and install electric shore power system for ocean going vessels at the Husky Terminal.

This grant will:

- Reduce harmful air pollution and greenhouse gas emissions associated with ocean going vessels at major ports.
- Help accelerate the transition to zero emission technologies at major ports
- Encourage shore power capability on ocean going vessels
- Encourage additional installations of electric shore power at ports

When completed, Ecology estimates installing shore power at the Husky terminal will reduce:

- 1,530 lifetime tons (over 30 years) of NOx emissions
- 27.9 lifetime tons (over 30 years) of PM emissions (PM2.5)
- 76,560 lifetime (over 30 years) tons of CO2 emissions

DELIVERABLES: Please note that all deliverables should be submitted via Ecology's Administration of Grants and Loans (EAGL) database, unless otherwise specified.

Recipient Task Coordinator: Graham VanderSchelden

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Project Title: Shore Power for Ocean Going Vessels at Husky Terminal ("Project")

Recipient Name: NORTHWEST SEAPORT ALLIANCE (NWSA)

**Design, Purchase, and Install Electric Shore Power****Deliverables**

Number	Description	Due Date
1.1	Written confirmation of completed shore power system design for ocean going vessels uploaded to EAGL.	10/30/2021
1.2	NWSA managing members' authorization of construction of and installation of Husky shore power system for ocean going vessels uploaded to EAGL.	07/30/2021
1.3	Quarterly Payment Request/Progress Reports (PRPRs). RECIPIENT is required throughout the term of this grant agreement (even if no funds are requested) to submit a quarterly PRPR, and should include an update on the current status of the project.	
1.4	Written confirmation of availability of matching funds and authority to accept grant.	07/30/2021
1.5	Copy of project plan and milestones.	10/30/2021
1.6	Completed Inadvertent Discovery Plan (IDP) submitted prior to breaking ground (IDP template available via EAGL download).	10/30/2021
1.7	Written confirmation that RECIPIENT has consulted with their utility provider, may be included in quarterly report.	10/30/2021
1.8	Written description of procurement process for selecting equipment, construction, and installation services including: <ul style="list-style-type: none"> <li>• method of vendor notification of bid opportunity and how many bidders were notified</li> <li>• evaluation summary of bids received</li> <li>• award letter or notice of contract award</li> </ul> awarded contractor name, contract number, date contract was executed	10/30/2021
1.9	Written notification of construction beginning, may be included in quarterly report.	10/30/2021
1.10	Written notification of date construction is completed and shore power system activated and available for use.	12/31/2022
1.11	Copy of final inspection report from all permitting authorities certifying that the shore power has been installed and is in working order and operating in accordance with local, state and federal codes; may be included in quarterly report.	12/31/2022
1.12	Maintenance and operations plan.	12/31/2022
1.13	Equipment Purchase Report (EPR) for shore power. This should be completed within 30 days of receipt and/or installation.	

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1.14	Ecology's Project Report Supplement submitted via EAGL, with each PRPR.	
1.15	Final Payment Request/Progress Report (PRPR). Include digital photographs of completed project. Please mark the Payment Request Form and Progress Report Form as "Final."	12/31/2022
1.16	Recipient Close-Out Report completed in EAGL. Must be completed no later than 7/30/2026.	

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## BUDGET

### Funding Distribution EG210256

**NOTE:** The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.

Funding Title: VW State Penalty NWSA      Funding Type: Grant  
Funding Effective Date: 04/01/2021      Funding Expiration Date: 06/30/2026

Funding Source:

Title: Air Pollution Control Account (APCA)

Type: State

Funding Source %: 100%

Description:

Approved Indirect Costs Rate: Approved State Indirect Rate: 0%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? No

VW State Penalty NWSA	Task Total
Design, Purchase, and Install Electric Shore Power	\$ 1,146,121.83

**Total: \$ 1,146,121.83**

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**Funding Distribution Summary****Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
VW State Penalty NWSA	0.00 %	\$ 0.00	\$ 1,146,121.83	\$ 1,146,121.83
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 1,146,121.83</b>	<b>\$ 1,146,121.83</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS****GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

**A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY****EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

#### B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov>.

#### C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or

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services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](https://sam.gov/SAM/) <<https://sam.gov/SAM/>> exclusion list.

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## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 7-1-2019 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

##### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

##### 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

##### 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
- Make the IDP readily available to anyone working at the project site.

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- Discuss the IDP with staff and contractors working at the project site.
- Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
  - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:
  - Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

## 5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

## 6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

## 7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email [PayeeRegistration@ofm.wa.gov](mailto:PayeeRegistration@ofm.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

## 8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

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- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## 9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

## 10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

## 11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review. The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

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Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

## 12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

## 16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

## 17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned

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(WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

## 18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

## 19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

## 20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the

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quarter being reported.

e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 21. PROPERTY RIGHTS

a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

a) Be kept in a manner which provides an audit trail for all expenditures.

b) Be kept in a common file to facilitate audits and inspections.

c) Clearly indicate total receipts and expenditures related to this Agreement.

d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington,

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for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder. RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

### 23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

### 24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

### 25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

### 26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

### 27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced

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packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 28. TERMINATION

### a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Failure to Commence Work.** ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

**Non-Performance.** The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

### b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Non-Allocation of Funds.** ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

### c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.



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d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.



Item No: 7C  
Date of Meeting: July 7, 2021

# Project Authorization For Terminal 3 & Terminal 4 Shore Power Project

## Presenters:

Hughes Wike, Engineering PM II

Graham VanderSchelden, Environmental PM II

# Action Requested

## Terminal 3/Terminal 4 Shore Power Project

*As referenced in NWSA Resolution No. 2020-02, Exhibit A, Delegation of Authority Master Policy, Paragraph 8.c.iii., states project costs exceeding \$300,000 require approval from Managing Members.*

Request authorization to amend Interagency Agreement C1900059 with the Washington State Department of Ecology and to accept grant agreement OTGP-2021-NoSeAI-00039 in the amount of \$1.146 million from the Washington State Department of Ecology to support the Terminal 3 and Terminal 4 Shore Power Project.

Request project authorization in the amount \$11,070,000, for a total authorized amount of \$11,600,000, for the Terminal 3/Terminal 4 Shore Power Project, Master Identification No. 201100.01.

# Background

## Northwest Ports Clean Air Strategy

*“Phase out emissions from seaport-related activities by 2050, supporting cleaner air for our local communities and fulfilling our shared responsibility to help limit global temperature rise to 1.5°C.”*



# Background

## Shore Power Program

**Aspirational goal:** install shore power at our major international container terminals by 2030

	2020 Shore Power Capable Hours	Emission Reduction Potential from 2020 Shore Power Capable Fleet		Emission Reduction Potential if all Vessels were Shore Power Capable	
		GHG	DPM	GHG	DPM
Husky	4,574	3,902	1.26	5,008	1.62
PCT	2,497	2,097	0.68	2,999	0.97
WUT	2,061	1,755	0.57	3,735	1.21
South Harbor	9,132	7,754	2.51	11,742	3.80
T-18	6,393	5,215	1.68	10,536	3.40
T-30	1,395	1,161	0.37	2,397	0.77
North Harbor*	7,788	6,376	2.05	12,933	4.17
Gateway Total	16,919	14,130	4.56	24,675	7.97

\* Some of the North Harbor shore power capable hours and emission reduction potential will likely be shifted to T-5 when it comes online

# Shore Power Program

## Maximizing Shore Power Use

### DRAFT Actions

Work with terminal operators and labor to organize labor arrangement for connecting and disconnecting vessels from shore power.
Work with terminal operators, ocean carriers, and the utilities to ensure that billing procedures are in place to pass power costs to the ocean carriers.
Work with the ocean carriers to secure commitment to use shore power where it is provided in our gateway.
Annually analyze the vessel fleet at major container terminals to assess the fraction of calls shore power capable
Track shore power usage <ul style="list-style-type: none"> <li>Track reasons that vessels do not connect and seek to mitigate factors that prevent shore power connections.</li> </ul>
Perform a study by the end of 2021 to identify voluntary and/or incentive-based initiatives that would increase fuel efficiency and/or reduce air emissions from cargo ships transiting through the Puget Sound to NWSA and PoT terminals. <ul style="list-style-type: none"> <li>Analysis of shore power incentives and potential low carbon fuel standard revenue</li> </ul>

### DRAFT Milestones

Milestone	Targeted Timeframe	Conditions for Success	Benefits
Commercial agreements, billing arrangements, and labor arrangements are in place to enable and maximize shore power connections.	By the time shore power infrastructure installation is complete at each terminal.	<ul style="list-style-type: none"> <li>Ocean carriers are willing to use shore power.</li> <li>Terminal operators are willing to work with us to facilitate shore power connections.</li> </ul>	<ul style="list-style-type: none"> <li>Enable shore power connections</li> <li>Maximize shore power use</li> </ul>
50% of <b>shore power capable</b> vessel calls at terminals with shore power infrastructure plug in.	By two years after shore power installation is complete	<ul style="list-style-type: none"> <li>Ocean carriers and terminal operators agree to connect vessels to shore power</li> </ul>	<ul style="list-style-type: none"> <li>Maximize emission reductions from investments in shore power infrastructure</li> </ul>
80% of <b>shore power capable</b> vessel calls at terminals with shore power infrastructure plug in.	By three years after shore power installation is complete	<ul style="list-style-type: none"> <li>Electricity rates ensure that plugging in to shore power does not significantly increase operational costs</li> </ul>	

# Ecology Grant

- Provides \$1.146 million for the Terminal 3 and Terminal 4 shore power project
- Existing ILA for Clean Truck Fund required NWSA and ECY to agree on alternate use for unused funds after Clean Truck Fund closed in Spring 2019
  - Shore power was the preferred alternative
- Legislative action in 2020 session directs ECY to reappropriate unused funds to shore power project in Tacoma
- Legal Mechanism:
  1. Parties amend existing ILA with ECY
    - Reduce amount from \$1.2 million to \$53,787
    - Guarantee that ECY will offer NWSA a “one time grant” for the remaining balance
  2. Parties enter into a grant agreement for the remaining \$1.146 million

# Background

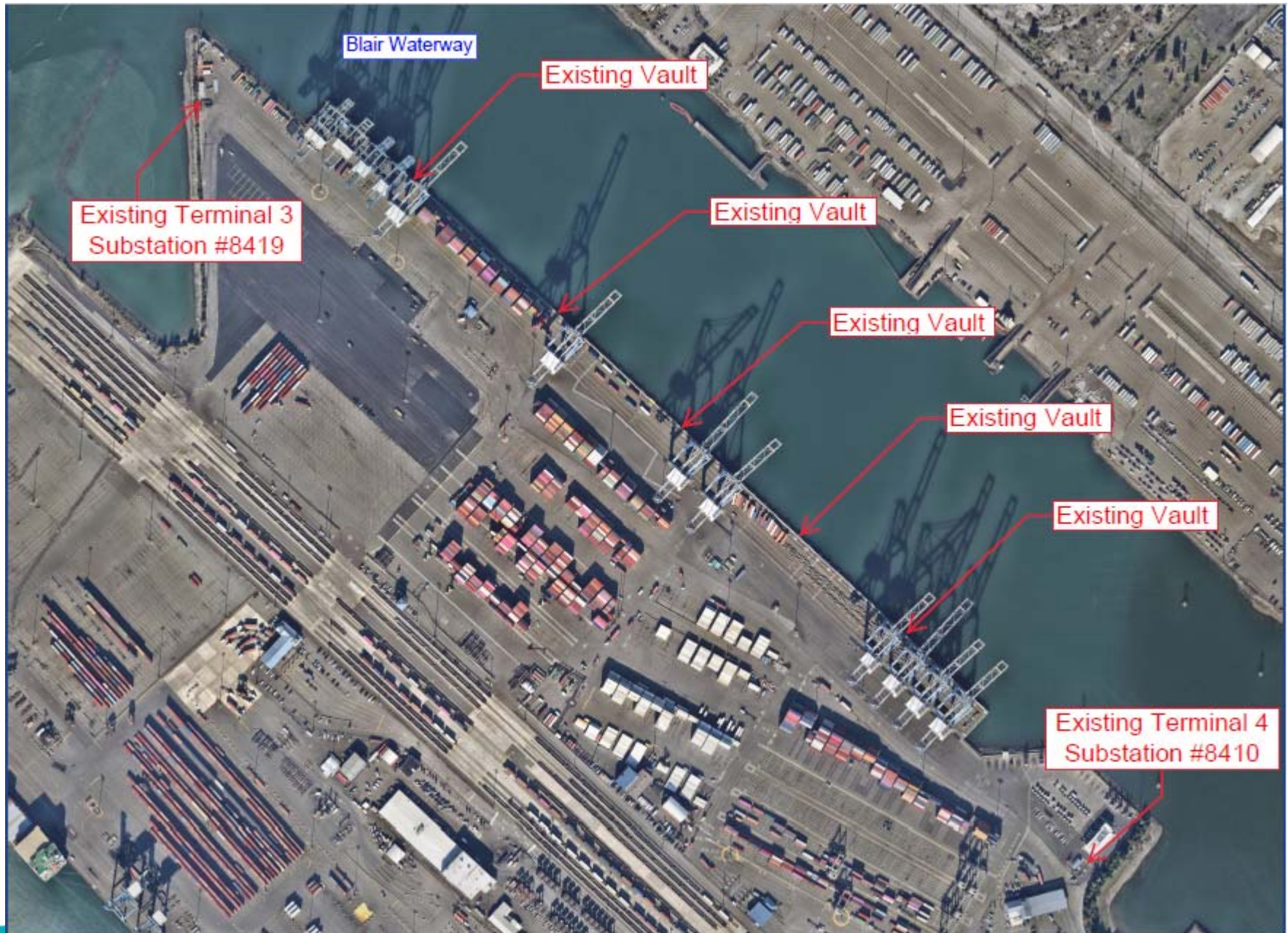
## Terminal 3/Terminal 4 Shore Power Project

### PROJECT OBJECTIVE

- Install safe and functional shore power systems at Terminals 3 and 4 that will power international container ships and contribute to an improvement in air quality by reducing marine shipping emissions.







# Background

## Terminal 3/Terminal 4 Shore Power Project

- Following authorization of design funds in September 2020, project has advanced to approximately 90% design completion.
- Conceptual project design has been expanded to incorporate current industry data and input from our local utility.
- Changes have been made to improve operational flexibility by providing adequate power supply and shore power connection points to accommodate larger vessels (>14,000 TEU).



# Industry Data Gathering

## Terminal 3/Terminal 4 Shore Power Project

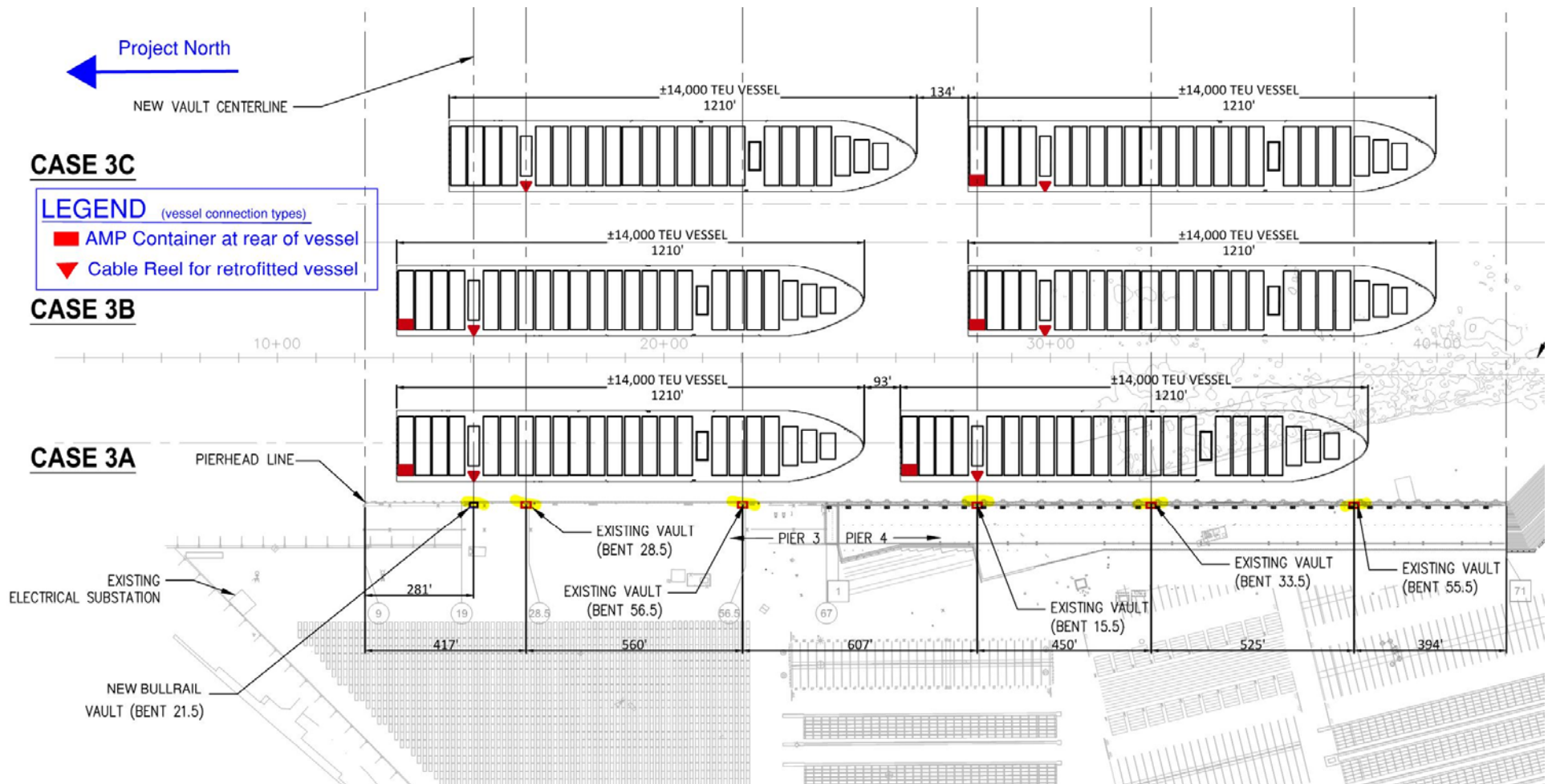
Vessel Size Range (TEU)	Summary of # of Recorded Vessel Connections		Average kW Data from Complete 2019 POLB Data Set (minus 3 outliers as described in notes below)			Assumed KVA Peak (extrapolated from data set, see assumptions below)	
	# of Vessel Calls	% of Total Calls	Average of all vessels (Total kWhrs used divided by Hours connected)	Largest Avg kW for each vessel type (max)	Smallest Avg for each vessel type	Average @ .95 PF with 2 peaking factor	Maximum @ .95 PF with 2 peaking factor
<5,300 TEU	118	17.3%	838	1388	407	1763	2922
6,000 to 7,500 TEU	147	21.6%	969	2222	209	2040	4679
8,000 to 9,600 TEU	258	37.9%	1079	2086	41	2272	4391
9,900 to 12,000 TEU	50	7.3%	880	1404	594	1853	2955
13,000 to 14,999 TEU	107	15.7%	1065	1476	685	2242	3108
Total Connected Container Vessels	681	100.0%				141 (20.7%)	Vessels exceed 2500kVA

### Notes:

- 1) Port of Los Angeles (POLA) data provided from environmental database system compiled by Starcrest. Output received from POLA on October 1, 2020

# Vessel Berthing Configurations

## Terminal 3/Terminal 4 Shore Power Project



# Current Project Cost Estimate

## Terminal 3/Terminal 4 Shore Power Project

- Planning Level Estimate: \$5,661,000
- Current Project Cost Estimate: \$11,600,000
- Considerations supporting cost increase:
  - Increased size of transformers from 2.5 MVA to 5.0 MVA
  - New TPU revenue meter, vault, and switch needed at Pier 3
  - Expansion of existing Terminals 3 & 4 substation footprints to accommodate new equipment
  - One additional shore power vault on Pier 3 bullrail
  - Results of independent estimate
  - Current market conditions

# Project Description and Details

## Terminal 3/Terminal 4 Shore Power Project

- **The scope of work includes the following:**
  - Design and specifications for Public Works contracting.
  - Project and construction management.
  - Installation of major electrical equipment such as transformers, switchgear assemblies, power factor correction components, conduit and wiring.
  - Installation of one new shore power vault on Pier 3 bullrail.
  - Wharf modification and trenching work.
  - Tacoma Public Utilities metering upgrades.
  - Inspection, testing, permitting, and commissioning.

# Project Schedule

## Terminal 3/Terminal 4 Shore Power Project

Activity	Timeframe
Complete Design	September 2021
Bid Advertisement	September 2021
Contract Award	November 2021
Substantial Completion	March 2023

# Financial Implications

## Terminal 3/Terminal 4 Shore Power Project

- The estimated cost of design completion and construction for this project is \$11,070,000.
- The estimated budget for this project is \$11,600,000.
- The current Capital Investment Plan (CIP) allocates \$5,718,000 for this project.
- This work and associated budget is consistent with the NWSA valuation.



# Project Benefit

## Terminal 3/Terminal 4 Shore Power Project

- Potential reduction of GHGs and diesel particulate matter by greater than 3,000 tons per year and 1 ton per year, respectively.
- Utilizes electrical infrastructure installed and space allocated for shore power systems during implementation of Pier 3 and Pier 4 reconfiguration projects.
- Leverages multiple grant funding opportunities.

# Financial Summary

## Terminal 3/Terminal 4 Shore Power Project

Phase	This Request	Total Previous Requests	Total Project Cost	Cost to Date	Remaining Cost
Design	\$256,485	\$530,000	\$786,485	\$448,604	\$337,881
Construction	\$10,813,515	\$0	\$10,813,515	\$0	\$10,813,515
Total	\$11,070,000	\$530,000	\$11,600,000	\$448,604	\$11,151,396

# Environmental Impacts/Review

## Terminal 3/Terminal 4 Shore Power Project

### **Permitting:**

- Project falls under existing programmatic permits to maintain, repair and replace existing infrastructure within 200 feet of the marine shoreline. Site Development and Electrical permits required through the City of Tacoma.

### **Remediation:**

- Select (new) vaults will extend to depth of existing environmental cap and legacy contamination.
- Appropriate controls will be implemented to ensure contaminated material is properly handled and disposed.

# Environmental Impacts/Review

## Terminal 3/Terminal 4 Shore Power Project

### **Stormwater:**

- Stormwater Best Management Practices (BMPs) and project-specific Stormwater Pollution Prevention Plan (SWPPP) will be developed and implemented.

### **Air Quality:**

- Project supports achievement of GHG Resolution and Northwest Ports Clean Air Strategy goals.

# Conclusion

## Terminal 3/Terminal 4 Shore Power Project

Request authorization to amend Interagency Agreement C1900059 with the Washington State Department of Ecology and to accept grant agreement OTGP-2021-NoSeAI-00039 in the amount of \$1.146 million from the Washington State Department of Ecology to support the Terminal 3 and Terminal 4 Shore Power Project.

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